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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 United States of America,  
12  
13 Plaintiff,  
14  
15 v.  
16 Darnell Cooley,  
17 Defendant.

Case No. 2:20-mj-446-BNW

**Motion for Leave to File a Reply in  
Support of Defendant's Motion for  
Order that Darnell Cooley be  
Immediately Tested for COVID-19  
[ECF No. 4]**

18  
19 Defense counsel reviewed the Government's Opposition to Defendant's  
20 Motion for Immediate COVID-19 Testing, filed yesterday, ECF No. 10. Defense  
21 counsel is surprised by the government's response. First, at Mr. Cooley's initial  
22 appearance on Monday, June 2, the government represented that it would not be  
23 opposing Mr. Cooley's request for testing, yet, three days later, it takes the opposite  
24 position without explanation. *See* ECF No. 2. Second, the government does not  
25 have standing to oppose Mr. Cooley's request for testing as it is exclusively a  
26 matter of his own medical care and access to counsel. *See* ECF No. 4 at 1 n.1. Third,

1 the government's opposition appears to speak for the United States Marshals  
 2 Service without indicating that it in fact conferred with the U.S. Marshals before  
 3 representing its position. It also seems unlikely the government conferred with the  
 4 U.S. Marshals prior to filing its opposition as testing is in U.S. Marshals' interest  
 5 given that Deputy Marshals have been and will be in close contact with Mr. Cooley  
 6 during his transport.

7 Likewise, the government's suggestion that COVID-19 tests are scarce is  
 8 directly contrary to the testimony of NSDC Warden Koehn during the evidentiary  
 9 hearing in *United States v. Cox* stating he had access to as many tests as needed.  
 10 Compare ECF No. 10 at 4 ("These protocols reduce the need for facility wide  
 11 testing, allowing the limited supply of testing materials to be used for those who  
 12 exhibit COVID-19 symptoms.") with Trans. of April 30, 2020 Hr'g. (ECF No. 46) at  
 13 17, *United States v. David Cox*, 2:19-cr-00271-RFB-VCF (Q: "How many test kits  
 14 do you have access to?" A: "As many as needed.").

15 For all of these reasons, the Court should grant Mr. Cooley's request for  
 16 testing. At this point, the Court has not ordered a reply brief in support of the  
 17 request. Should a reply be beneficial to the Court, Mr. Cooley could file one by  
 18 Tuesday, June 9.

19 DATED this June 5, 2020.

20 IT IS ORDERED that ECF  
 21 No. 11 is GRANTED.

Respectfully submitted,

22 RENE L. VALLADARES  
 23 Federal Public Defender

24 **IT IS SO ORDERED**

25 **DATED: June 08, 2020**

By: /s/ Andrew Wong

Andrew Wong  
 Assistant Federal Public Defender

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**BRENDA WEKSLER**  
**UNITED STATES MAGISTRATE JUDGE**

**Certificate of Service**

I certify that on June 5, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Nevada by using the CM/ECF system. Participants registered CM/ECF users will be served by the CM/ECF system. The following non-CM/ECF participants will be served by U.S. Mail:

Darnell Cooley  
Nevada Southern Detention Center  
2190 E. Mesquite Ave.  
Pahrump, NV 89060

/s/ *Brandon Thomas*  
Employee of Federal Public Defender